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CITATIONS

Statutes involved:

District of Columbia Code (1940 ed.):

Section 22–701	2
Section 22–105	3

709319—46——1

In the Supreme Court of the United States

OCTOBER TERM, 1946

No. 236

HENRY M. LADREY AND EVA W. LADREY,
PETITIONERS

v.

THE UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the Court of Appeals (R. 71–75) is reported at 155 F. 2d 417.

JURISDICTION

The judgment of the Court of Appeals was entered May 20, 1946 (R. 76). On June 14, 1946, an order was signed by Mr. Justice Black extending the time within which to file a petition for a writ of certiorari to June 29, 1946 (R. 78). The petition for a writ of certiorari was filed June 27, 1946. The jurisdiction of this Court is invoked

under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925. See also Rules 37 (b) (2) and 45 (a) of the Federal Rules of Criminal Procedure.

QUESTIONS PRESENTED

1. Whether the evidence was sufficient to support the conviction of petitioner Henry M. Ladrey.

2. Whether it was error, at the trial of an indictment charging offering of a bribe to a witness in a pending abortion prosecution, to permit the witness to testify concerning the abortion performed on her for the purpose of establishing that the witness to whom the bribe was allegedly offered was a material witness, where counsel for the defendants accused of the bribery attempt specifically withdrew their objections to the testimony.

3. Whether the prosecuting attorney's argument to the jury was improper.

STATUTES INVOLVED

The pertinent sections of the District of Columbia Code (1940 ed.) are as follows:

> SECTION 22–701. Whoever promises, offers, or gives, or causes or procures to be promised, offered, or given, any money or other thing of value, or makes or tenders any contract, undertaking, obligation, credit, or security for the payment of

money, or for the delivery or conveyance of anything of value, to any executive, judicial, or other officer, or to any person acting in any official function, or to any juror or witness, with intent to influence the decision, action, verdict, or evidence of any such person on any question, matter, cause, or proceeding or with intent to influence him to commit or aid in committing, or to collude in or allow any fraud, or make any opportunity for the commission of any fraud, shall be fined not more than five hundred dollars, or be imprisoned not more than three years, or both.

SECTION 22–105. In prosecutions for any criminal offense all persons advising, inciting, or conniving at the offense, or aiding or abetting the principal offender, shall be charged as principals and not as accessories, the intent of this section being that as to all accessories before the fact the law heretofore applicable in cases of misdemeanor only shall apply to all crimes, whatever the punishment may be.

STATEMENT

A one-count indictment filed in the District Court of the United States for the District of Columbia charged that on January 7, 1944, there being then pending in the same court a proceeding in which petitioner Henry Ladrey was charged with the crime of abortion and in which one Hazel Queenan was a witness, petitioners

offered $260 to the witness Queenan with intent to influence her action and evidence as witness in the proceeding by inducing her to remain away and not be present as such witness in the proceeding (R. 2–3). Petitioners were convicted (see R. 71) following a trial by a jury (see R. 69). They received suspended sentences of one to three years' imprisonment and were placed on probation (see Pet. 3). On appeal, their convictions were affirmed (R. 76).

The evidence adduced by the Government may be summarized as follows:

Hazel Queenan, upon whom petitioner Henry Ladrey, a physician, was charged with having attempted to perform an abortion, testified that a woman later identified as petitioner Eva Ladrey, Dr. Ladrey's wife, came to her home at 2310 Georgia Avenue, N. W. on the evening of January 6, 1944, and inquired whether she was "ready." Upon Hazel's reply that she had to attend a union meeting, Eva informed her that she would return the following evening. Eva did return the following evening, January 7, 1944. Sergeants Scott and Crooke of the Metropolitan Police Department had secreted themselves in the kitchen of the Queenan home, Hazel having notified the police of Eva's coming to her house the previous evening. Hazel asked Eva to explain what "Mrs. Johnson," who had approached Hazel on December 27, 1943, in connection with the abortion case against Dr. Ladrey, "had decided with Dr. Ladrey." Eva

replied that Mrs. Johnson had been to see Dr. Ladrey; that Dr. Ladrey had agreed to "cooperate" with Hazel if she "would go away"; that first Hazel would have to go to the District Attorney and "make a statement" that she "did not want to prosecute against Dr. Ladrey"; and that after she had made the statement she would be given $100 and, after she had gone away, another $100, plus a refund of the $60 she had been charged for the abortion. Eva showed Hazel an envelope in her pocketbook, which she said contained $100. At that point Sergeants Scott and Crooke entered, and, on being questioned, Eva told Scott that her name was "Mrs. Wilkins." A short while later, the policemen left with Eva. As they were leaving, Hazel told Crooke that Eva had $100 which she had offered her. (R. 6–16.)

Sergeant Scott testified that he and Sergeant Crooke went to the Queenan residence at about 6 P. M. on January 7, 1944, and concealed themselves in the kitchen. Shortly thereafter, a woman arrived and carried on a conversation with Hazel in the front room of the apartment. He overheard the woman, whom he later identified as Eva Ladrey, tell Hazel that she "had come to make arrangements with her to go over to Dr. Ladrey's house"; that "Dr. Ladrey had sent her there" and "wanted her to come over there and make arrangements to drop the charges that had been placed against him in an abortion case";

that Dr. Ladrey "had plenty of money" and "would pay her the $60" charged for the abortion, plus "expenses to go away"; and that Hazel "was to sign papers and go to the District Attorney's office and have the case dropped." Thereupon, Scott entered the room where the conversation had occurred and asked Eva her name, to which she replied "Mrs. Wilkins." She admitted that Dr. Ladrey had sent her there to make arrangements for Hazel to drop the case against him, and that she had offered Hazel $60 and expenses to go away and drop the case. Asked by what means she came to the house, Eva answered that she had come by streetcar. Scott then placed her under arrest and, in company with Sergeant Crooke, they left the Queenan house. Scott looked up and down the street "to see if anybody was there that had brought her to the place," and suggested, "Let's walk around the corner here." Thereupon, Eva said, "Well, I will tell you, I am Mrs. Ladrey; Dr. Ladrey is waiting at 6th and Trumbull for me." The three then proceeded in the police car to the corner of 6th and Trumbull Streets, where Dr. Ladrey was standing near an automobile. Scott ordered Dr. Ladrey to get into the police car, and as they drove to police headquarters, he said, "Doctor, Mrs. Ladrey has told us that you sent her up here and—or that you brought her up here and sent her in this house to get this girl to drop the charges, and she has told

us that she offered her money and we heard her offer the money. Is that true?" Dr. Ladrey replied, "Yes, I did bring her up here," but added, "I didn't know what she was going to do and I didn't know where she was going." At police headquarters, Scott asked Eva "who was this Mrs. Johnson, if she knew, that had been to this house previous to her." Eva replied, "Well, I don't want to tell who she is because she was doing a friendly gesture for us when she went there." Scott asked Eva how much money she had in her pocketbook, to which she replied, "* * * just two or three dollars and some change." He then asked and received permission to examine her pocketbook, and found an envelope containing $100. Eva explained that she "was keeping that for someone, and that's how I happened to have that." Scott also found in the pocketbook a note, which Eva admitted was in her handwriting, reading (R. 29):

> I prefer (wish) that the charges made against ---------- be dropped. I made several misstatements against him. I do not want to be tried for perjury. So I am asking you to drop the matter please. I thank you.

Asked why she had the note, Eva said that "the girl had propositioned her to give her the money and that's why she had the note," but that she "did not intend to have the girl sign it." (R. 20–31.)

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Sergeant Crooke also testified to substantially the same events as those related by Sergeant Scott (R. 16–20).

Dr. Ladrey, who testified for the defense, denied that he drove his wife "up or near" the Queenan residence on the evening in question. He maintained that he had not seen his wife since early that morning. Asked if he knew how his wife "happened to bring the officers around to Sixth and Trumbull Streets when she was arrested," he replied, "I don't—if she brought them there. She did not." He denied knowing anything about where his wife "was or where she was going or what she was doing" on the day in question. He said that he and his wife "always meet there just off the Emergency Department of Freedmen's Hospital," "usually by arrangement." Asked if he had an arrangement to meet her on the evening in question, he replied in the affirmative, "because, strange to say, that evening I did know I was going to see Mrs. Marshall at the hospital." He denied all knowledge, prior to his arrest, of the $100 and the note found in his wife's pocketbook, and stated that he had never discussed the abortion case with her. He also denied telling Sergeant Scott that he had brought his wife to the vicinity of the Queenan residence. (R. 32–48.)

Eva Ladrey, who also testified for the defense, denied that she offered money to Hazel as a

bribe. Her story was that Hazel wished to drop the charges against Dr. Ladrey because she had made false statements against him, and that she (Eva) was merely helping her make arrangements to discontinue the prosecution. She maintained that her husband knew nothing of her going to Hazel's, and that she had not seen him, previous to his arrest, since early that morning. She denied having discussed the matter with her husband after Hazel told her she wished to drop charges against him. She denied that there was any discussion of money in her conversation with Hazel. She denied having told the officers that Dr. Ladrey had brought her to the Queenan house. She denied all knowledge of "anybody by the name of Johnson that had been up there to see Miss Queenan," and denied having told the officers that she "didn't want to implicate her because she only went as a friendly gesture." She denied giving a false name when first arrested, saying she gave her name as "Mrs. Eva Wilkins Ladrey." (R. 48–59.)

ARGUMENT

1. It is contended on behalf of petitioner Henry Ladrey that he was entitled to a directed verdict of acquittal at the conclusion of the Government's case and at the end of the whole case (Pet. 4–5, 6–10). But, as the Court of Appeals pointed out, he waived the right to insist upon his motion for a directed acquittal at the end of the Govern-

ment's case by introducing evidence on his own behalf. But in any event, the contention is clearly without merit. The jury was entitled to believe the testimony of Sergeant Scott (*supra,* p. 7) and Sergeant Crooke (R. 19–20) that Dr. Ladrey admitted to them that he had driven his wife to the vicinity of the Queenan residence. Likewise, as the Court of Appeals said (R. 73), the jury "could well have regarded as incredible the declaration of a man who lived in Alexandria, Virginia, that he had let his wife out of the car in the darkness of a winter evening at Georgia Avenue and Trumbull Street, some miles from their residence, but that he did not know where she was going or what she was going to do." This admission by Dr. Ladrey and his incredible exculpatory statement which he coupled with it gave rise to the permissible inference that he was well aware of his wife's effort to bribe Hazel, that he was in fact the instigator of the crime, and that he conspired with her to commit the crime. And when the admission is considered in conjunction with his wife's statement to Hazel in offering the bribe (*supra,* p. 5) which both Sergeant Scott (*supra,* pp. 5–6) and Sergeant Crooke (R. 17–18) overheard, to the effect that she was acting on behalf of Dr. Ladrey,[1] no reasonable doubt of his guilt could remain.

[1] The wife's statement was competent evidence, as recognized by the court below. See R. 74. See also pp. 14–15, *infra.*

2. It is further contended on behalf of petitioner Henry Ladrey that the trial judge erred in permitting the police officers to testify that Eva Ladrey, following her arrest, made a statement, out of the presence of Dr. Ladrey, to the effect that Dr. Ladrey had brought her to, or near, the scene of the alleged crime (Pet. 5, 13–15). Since it is conceded that the testimony was admissible against Eva (Pet. 5, 13), the contention is really that the trial judge should have instructed the jury that the statement of Eva to which the police officers testified should be considered only against Eva and not against Dr. Ladrey. The record, however, shows that counsel for petitioners did not object at the time to the officers' testimony that Eva made the statement (see R. 19, 23). The first time the admissibility of the statement as against Dr. Ladrey was questioned was following a discussion of a motion for a directed acquittal at the conclusion of the Government's case, when counsel for petitioners asked the judge to "instruct the jury that anything said by the wife out of the presence of the defendant, the male defendant, is binding on her but not binding on the male defendant" (Tr. 94).[2] The judge indicated

[2] The printed record before this Court, references to which have been made herein by the letter "R.," consists of excerpts from the original typewritten transcript of record in the trial court, which excerpts constituted a "Joint Appendix" to the briefs in the Court of Appeals. The printed record does not contain petitioners' requested instruction and the

that he agreed generally with this statement, but doubted that it applied to statements made in offering the bribe (Tr. 95). The matter was subsequently discussed at greater length (Tr. 123–136), and the judge charged the jury on the point as follows (Tr. 236–237):

> Now, I want to give you an instruction respecting portions of the evidence that was admitted in this cause by way of testimony as to statements made by one of the defendants. * * *
>
> But assuming now, and I am not intending to give any instruction as to what you should find, but assuming you find that such statements were made, I want you to understand the law with respect to such statements.
>
> There was testimony given concerning alleged statements made by the woman defendant out of the presence of the male defendant. Now, if you believe such statements were made, you may consider those statements as evidence where the statements constituted the offense that is here charged in determining whether or not an offense was committed.
>
> You may not consider as against the male defendant statements made out of his presence by the female defendant in the nature

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instruction given in respect of the particular issue here involved, but the original transcript of record lodged with the Clerk of this Court does. References herein to the latter are indicated by the abbreviation "Tr."

> of admissions against interest and narrative statements of what happened afterwards. Statements that she may have made out of his presence may be considered as evidence against her. Statements made after the offense out of his presence made by her may not be considered as evidence against the male defendant. You must with respect to that defendant consider only statements made by him or acts done by him.

Plainly, therefore, the trial judge did specifically instruct the jury not to consider as against Dr. Ladrey the admission of Eva, made out of his presence, that he brought her to or near the scene of the alleged crime. In short, the trial judge did give the instruction which the present contention erroneously assumes was not given. It is not claimed that the statements made by Eva to Hazel prior to her arrest and in connection with the offer of the bribe were not admissible as against Dr. Ladrey. Nor could such a claim be successfully made, since those statements were made in furtherance of the conspiracy of which there was independent evidence that Dr. Ladrey was a member, and consequently were admissible against him under the general rule making one conspirator liable for the acts and declarations of a co-conspirator made in furtherance of the object of the conspiracy (see the opinion below (R. 73–74), where this rule and its application to this

case are discussed). It might be added that even if the trial judge had not instructed the jury not to consider as against Dr. Ladrey Eva's admission to the officers, subsequent to her arrest, that Dr. Ladrey had brought her to the vicinity, the failure so to instruct could not have been prejudicial, in view of the fact that Eva had told Hazel, prior to her arrest and in connection with the offer of the bribe, that "Dr. Ladrey had sent her there" (supra, p. 5) and, in effect, that she was acting in his behalf (*supra,* pp. 5–6; see also R. 17–18), which statements, as we have indicated, were indisputably admissible against Dr. Ladrey.

3. On behalf of both petitioners, it is contended that the trial court erred in permitting Hazel Queenan to testify concerning the attempted abortion performed on her by Dr. Ladrey since such testimony "could only have tended to humiliate and disgrace" petitioners (Pet. 5, 10–12). The facts on which this contention is based are as follows: Counsel for the Government and for the defense stipulated at the beginning of the trial that on January 7, 1944, the date of the alleged bribery, a prosecution for attempted abortion was pending against Dr. Ladrey. The indictment in the abortion case, which named Hazel Queenan as the woman upon whom the attempted abortion was committed, was admitted in evidence without objection by the defense. When Hazel was called as a witness, and it appeared that counsel for the

Government was about to question her with reference to the abortion, defense counsel requested the court not to permit government counsel "to go into too much of the evidence concerning that other case." Government counsel said that, if defense counsel would "stipulate that she is a witness in that other case," that would be sufficient. Defense counsel maintained that it was incumbent on the Government "to prove under this indictment that she was a material witness." The court said that the Government was "entitled to show that she is a material witness * * * by testimony," but that the necessity for such testimony could be obviated by a mutually agreed upon stipulation. After further discussion, which did not result in the suggested stipulation, government counsel suggested that, to save time, he be permitted to establish by testimony simply that Hazel "was a woman who had an abortion performed on her by this doctor." The court thereupon gave leave to the Government to adduce by testimony only such facts as would show that Hazel was a material witness in the abortion case. Defense counsel thereupon specifically withdrew their objections. (R. 3–9.) Government counsel proceeded to question Hazel briefly with reference to the abortion attempt without further objections by defense counsel (R. 10–12). Even if petitioners' contention were meritorious, therefore, it is clear that they waived

their objection to the testimony now challenged. But in any event the contention is without merit. As the Court of Appeals said (R. 73), it was proper to admit "evidence tending to show that Hazel Queenan was a material witness in the abortion case. Her testimony concerning the operation was limited to statements to the effect that she was the person upon whom the operation had been performed, and statements showing the nature of the operation. This was no more than the bare necessity of the case for the prosecution required."

The related contention (Pet. 12) that petitioners were prejudiced by Sergeant Scott's statement that "in looking through the pocketbook I found a written note in there with reference to the other case" (R. 25) is equally without merit, since the "other case" was obviously a reference to the pending abortion case, concerning which Hazel had already testified, and the indictment in which had been admitted in evidence with the consent of defense counsel (*supra,* pp. 14–15).

4. Finally it is contended that the court erred in allowing improper argument to the jury by the prosecuting attorney (Pet. 5, 15). The record shows that petitioners introduced in their defense evidence of their good reputation in the community. The prosecuting attorney, in his closing argument to the jury, pointed out that, though evidence a defendant's good reputation may be

such as to raise a reasonable doubt of his guilt of the crime charged, such evidence should be considered "in connection with all the other evidence in the case"; that a person's reputation consists merely of "what other people think of him"; and that it should not be thought "because a person has a good reputation that he cannot commit a crime." By way of illustration, he said, "* * * for example, a few years ago you heard of some prominent bankers, and you may recall in your own experience individuals that you thought had good reputations, but they went to the penitentiary for something." (R. 66–69.) We submit that there was nothing improper or prejudicial to petitioners in such a line of argument, particularly in view of the overwhelming evidence of their guilt.

CONCLUSION

The decision below is correct and no conflict of decisions or important question is involved. We therefore respectfully submit that the petition for a writ of certiorari should be denied.

J. HOWARD MCGRATH,
Solicitor General.
THERON L. CAUDLE,
Assistant Attorney General.
ROBERT S. ERDAHL,
PHILIP R. MONAHAN,
Attorneys.

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